

# TENNESSEE REGULATORY AUTHORITY

Ron Jones, Chairman  
Deborah Taylor Tate, Director  
Pat Miller, Director  
Sara Kyle, Director



July 15, 2005

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Nashville, Tennessee 37243-0505

## HAND DELIVERED

Honorable Paul G. Summers  
Attorney General & Reporter  
for the State of Tennessee  
425 Fifth Avenue North  
Nashville, Tennessee 37243

RE: Rulemaking Hearing Rule 1220-4-2-.40 Obligations of Resellers and  
Underlying Carriers of Local Service upon the Termination of Service

Dear General Summers

Enclosed for your review is a Rulemaking Hearing rule adopted by the Tennessee Regulatory Authority ("Authority" or "TRA") pursuant to Tenn. Code Ann. § 65-2-102 and § 4-5-201 *et seq.* on September 27, 2004. The purpose of the proposed rule subsection adopted by the Authority, pursuant to hearing, is to ensure that customers of local telecommunications service resellers receive adequate notice before their service is disconnected. This rule subsection will also require resellers to provide sufficient notice to the Authority.

A Notice of Rulemaking to amend TRA Rules Chapter 1220-4-2 was originally filed with the Secretary of State on September 29, 2000. The proposed rulemaking sought to amend the chapter by deleting Rules 1220-4-2-.01 through .42 in their entirety and substituting new rules 1220-4-2-.01 through .22, resulting in a complete revision of the TRA's telephone service standard rules. After the rulemaking hearing on November 16, 2000, and extended comment period, the Authority held three workshops on January 16, January 30 and February 20, 2001. During a regularly scheduled Authority Conference held on June 18, 2002, the Directors considered the proposed rules, but did not make a final decision.

On November 10, 2003, during a regularly scheduled Authority Conference Chairman Deborah Taylor Tate requested that proposed rule subsection 1220-4-2-.07, Termination of Local Service to a Reseller or Cessation of Service by a Local Telecommunications Service Provider, be examined separately from the rest of the proposed rules in this docket. The TRA Staff was directed to review and further revise this particular subsection of the proposed rules for future consideration. Staff prepared a revised rule subsection and on January 16, 2004, a Notice of Filing was issued requesting all interested parties to file written comments no later than January 30, 2004, regarding the proposed amended rule subsection 1220-4-2-.07. On April 8, 2004, a workshop was conducted by the Staff to discuss the proposed amended rule subsection 1220-4-2-.07.<sup>1</sup>

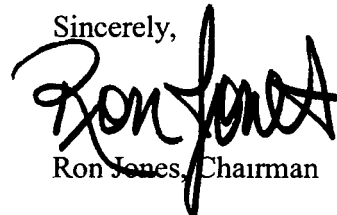
<sup>1</sup> A Notice of Workshop was issued on March 31, 2004

Honorable Paul G. Summers  
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Page Two

The proposed amended rule subsection 1220-4-2-07 was considered during a regularly scheduled Authority Conference held on September 13, 2004. During the Conference modifications were offered to the proposed amended rule subsection. Interested parties were given an opportunity to comment regarding the modifications and deliberation was rescheduled for the following Authority Conference. During the September 27, 2004 Authority Conference, a majority of the Directors approved the rule subsection in the form as submitted on September 13, 2004.

During preparation of rule subsection 1220-4-2-.07 for your review it was discovered that the placement of this proposed rule subsection within the current set of rules had not been specifically addressed by the Authority. Under the number as considered, the proposed rule subsection would overlap or perhaps supersede the current existing rule, 1220-4-2-.07 Meter Reading Equipment. Therefore, during a regularly scheduled Authority Conference held on June 27, 2005 the Directors voted unanimously to designate the proposed rule as subsection 1220-4-2-.40.<sup>2</sup>

Your review and consideration of the attached proposed rule pursuant to Tenn. Code Ann. § 4-5-211 will be greatly appreciated. Should you have any questions concerning the proposed rule, please do not hesitate to contact me at (615) 741-3668 or General Counsel, Richard Collier, at (615) 741-2904, extension 170.

Sincerely,  
  
Ron Jones, Chairman

Enclosure

cc: Director Deborah Taylor Tate  
Director Pat Miller  
Director Sara Kyle  
Richard Collier, General Counsel  
Docket File

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<sup>2</sup> Subsection 40 is a vacant subsection, having been previously repealed by Public Chapter 440, effective July 1, 1985

Rulemaking Hearing Rules  
of the  
Tennessee Regulatory Authority

Chapter 1220-4-2-.40

New Rule

1220-4-2-.40 Obligations of Resellers and Underlying Carriers of Local Service upon the Termination of Service

- (1) The purpose of this rule is to protect those customers who are obtaining their local service from resellers from termination of their service without adequate notice. Because of the public safety implications, local service providers shall have additional obligations as listed below.
- (2) This rule applies to any local telecommunications reseller that ceases the provision of any telecommunications service in all or any portion of the State of Tennessee. This rule does not apply to:
  - (a) Cessation of a service when a reseller replaces the terminated service with comparable service without interruption as long as such change is in compliance with Rule 1220-4-2-.56; and
  - (b) Discontinuance of a service that has no subscribers.
- (3) No underlying carrier shall terminate local service to a reseller until the following requirements are met:
  - (a) The underlying carrier shall provide no less than thirty (30) days written notice to the reseller that service will be terminated on a date certain along with the reason(s) for such action. A copy of such written notice shall be timely provided to the Authority.
    1. Notwithstanding the above, where the underlying carrier alleges fraud, abuse, or unreasonable interference with the underlying carrier's network, the underlying carrier is allowed to disconnect the reseller after a two (2) business day notice to the Authority, unless the Authority chairman specifically orders otherwise prior to disconnection. If this emergency provision is invoked, the underlying carrier may be required to comply with the underlying carrier's service continuity plan per section (5).
  - (b) Within ten (10) days of receipt of the underlying carrier's written disconnection notice to the reseller, the reseller shall notify its customers advising that their service will be terminated on a day certain. Such notice shall be no less than fourteen (14) days prior to the date of disconnection. The notice shall advise end-users of the following:

1. Advise its customers of the need to choose another local telecommunications service provider to continue service after a date certain; and
  2. Provide customers any and all relevant information, if available, that may assist the customers in selecting another local telecommunications service provider.
- (c) If the reseller fails to fulfill its obligations under section (3)(b), the Authority will notify the reseller's customers seven (7) days prior to termination of the reseller's local service and recover costs associated with such a notice from the reseller.
- (4) Additional Local Service Obligations for Resellers:
- (a) The reseller must provide the Authority and the underlying carrier any and all relevant information, including but not limited to its customers' names and telephone numbers to ensure that end-user customers will not experience service outage. The reseller must use its best efforts to provide timely and accurate information to the Authority and the underlying carrier.
  - (b) The reseller must file a copy of its notice or the text of the voice message to its customers with the Authority within the fourteen (14) day time period required in 3(b).
  - (c) The reseller shall refund to its customers any credits due as a result of the termination of service within thirty (30) days of the termination of the service. The reseller shall provide information to its customers on how such credits will be determined and distributed.
- (5) Additional Local Service Obligations for Underlying Carriers:
- (a) Within 60 days of the effective date of this rule, telecommunications service providers with agreements to resell basic local exchange telecommunications service shall file a tariff which outlines a service continuity plan consistent with this Rule Chapter and, at a minimum, shall contain the following provisions.
    - (1) The underlying carrier shall provide, at a minimum, basic local exchange service, as defined in Tenn. Code Annotated § 65-5-108, to the customers of the reseller for at least seven (7) days following disconnection of the reseller's service, or until the customer selects another provider of local service, whichever is less. If a customer selects a new service provider, the underlying carrier may charge the new provider for the service provided at the tariffed rate

- (2) Within the seven (7) days after termination of service of the reseller, the customer must make an affirmative choice to stay with either the underlying carrier or select another carrier. The underlying carrier is not obligated to provide service to the customer after the seven (7) day transition period. Service may be terminated after the seven (7) day transition period unless the end-user has either transitioned to a new service provider or has placed an order to transition to the underlying carrier.
- (b) Should the reseller fail or refuse to provide notice to its customers as required in (3) above, the underlying carrier shall provide reasonable assistance to the Authority in notifying the customers of the reseller.
- (6) Violation of this rule, including failure to provide customer notice in (3), shall be subject to the provisions and penalties of Tenn. Code Ann. § 65-4-120.

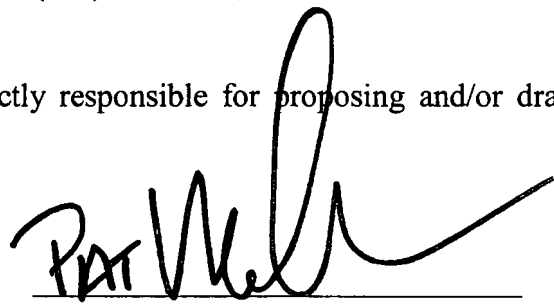
Legal Contact and/or party who will approve final copy for publication:

J. Richard Collier  
General Counsel  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37343  
(615) 741-2904, extension 170

Contact for disk acquisition:

J. Richard Collier  
General Counsel  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243  
(615) 741-2904, extension 170

Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:



Pat Miller, Chairman

The roll-call vote by the Tennessee Regulatory Authority on these rulemaking hearing rules was as follows:

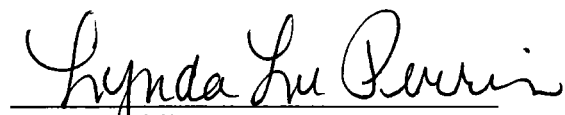
	Aye	No	Abstain
Pat Miller, Chairman	<u>X</u>	<u>      </u>	<u>      </u>
Deborah Taylor Tate, Director	<u>X</u>	<u>      </u>	<u>      </u>
Sara Kyle, Director	<u>X</u>	<u>      </u>	<u>      </u>
Ron Jones, Director	<u>      </u>	<u>X</u>	<u>      </u>

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Regulatory Authority on the 27th day of September, 2004.

Further, I certify that the provisions of Tenn. Code Ann. § 4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking has been filed in the Department of State on the 29th day of September, 2000, and such notice of rulemaking hearing having been published in the October, 2000 issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the 16th day of November, 2000.

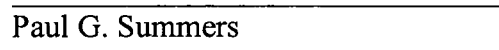
  
 Pat Miller, Chairman

Subscribed and sworn to before me this the 6<sup>th</sup> day of July, 2005.

  
 Notary Public

My commission expires on the 28<sup>th</sup> day of May, 2006.

All rulemaking hearing rules provided for herein have been examined by the Attorney General & Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5, Section 211.

  
 Paul G. Summers  
 Attorney General & Reporter

The rulemaking hearing rules set out herein were properly filed in the Department of State on the \_\_\_\_\_ day of \_\_\_\_\_, 2005, and will become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2005

\_\_\_\_\_  
Riley C. Darnell  
Secretary of State

By: \_\_\_\_\_